

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 497

BY STATE AFFAIRS COMMITTEE

AN ACT

RELATING TO EMPLOYMENT OF UNAUTHORIZED ALIENS; TO PROVIDE LEGISLATIVE FINDINGS; AMENDING SECTION 18-3001, IDAHO CODE, TO PROVIDE FOR A MISDEMEANOR AND TO MAKE A TECHNICAL CORRECTION; AMENDING CHAPTER 30, TITLE 18, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 18-3001A, IDAHO CODE, TO PROVIDE THAT ANY PERSON WHO WILLFULLY DESTROYS, ALTERS, FALSIFIES OR COMMITS THE THEFT OF CERTAIN PUBLIC DOCUMENTS FOR CERTAIN PURPOSES SHALL BE GUILTY OF A MISDEMEANOR OR FELONY; AMENDING TITLE 44, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 4, TITLE 44, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE DEFINITIONS, TO PROHIBIT EMPLOYMENT OF UNAUTHORIZED ALIENS, TO PROVIDE PROVISIONS RELATING TO THE FILING AND INVESTIGATION OF A COMPLAINT, TO PROVIDE FOR A MISDEMEANOR RELATING TO THE FILING OF A FALSE OR FRIVOLOUS COMPLAINT, TO PROVIDE THAT AN ACTION SHALL BE BROUGHT IN A CERTAIN COUNTY, TO PROVIDE FOR AN EXCEPTION, TO PROVIDE PROVISIONS RELATING TO FINDING A VIOLATION OR VIOLATIONS, TO PROVIDE PROVISIONS RELATING TO DETERMINING WHETHER AN EMPLOYEE IS AN UNAUTHORIZED ALIEN, TO PROVIDE FOR JUDICIAL NOTICE, TO PROVIDE FOR AN AFFIRMATIVE DEFENSE AND TO PROVIDE FOR AN ABSOLUTE DEFENSE; AMENDING CHAPTER 30, TITLE 63, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 63-3035D, IDAHO CODE, TO PROVIDE PROVISIONS RELATING TO NOTICE FROM THE STATE TAX COMMISSION TO CERTAIN EMPLOYERS; AND PROVIDING SEVERABILITY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. LEGISLATIVE FINDINGS. The Legislature finds that this act complies with the requirements of 8 U.S.C. section 1324a(h)(2) by discouraging the knowing employment of unauthorized aliens through licensing and similar laws. It is the intention of the Legislature to ensure that those who are employed in Idaho are legally authorized to work in this state. The Legislature recognizes that there are industries in Idaho that are in need of temporary and seasonal workers, and that historically these workers have come to the United States from other countries through legal guest worker programs. While the Legislature encourages our congressional delegation to pursue development of a guest worker program to meet the needs of Idaho employers, such a program should not reward those who have already broken our laws or provide any form of amnesty. The Legislature also finds that it is the public policy of the state of Idaho to discourage and prohibit the manufacturing of false identification and the use of false identification by unauthorized aliens to obtain employment.

SECTION 2. That Section 18-3001, Idaho Code, be, and the same is hereby amended to read as follows:

1 18-3001. FALSE PERSONATION. (1) Every person who falsely personates
2 another, and in such assumed character, either:

3 ~~1.~~(a) Becomes bail or surety for any party in any proceeding whatever,
4 before any court or officer authorized to take such bail or surety; or

5 ~~2.~~(b) Verifies, publishes, acknowledges or proves in the name of
6 another person, any written instrument, with the intent that the same
7 may be recorded, delivered and used as true; or

8 ~~3.~~(c) Does any act whereby, if it were done by the person falsely
9 personated, he might in any event, become liable to any suit or
10 prosecution, or to pay any sum of money, or to incur any charge,
11 forfeiture or penalty, or whereby any benefit might accrue to the party
12 personating, or to any other person;

13 Is punishable by imprisonment in the county jail not exceeding two (2) years,
14 or by a fine not exceeding five thousand dollars (\$5,000).

15 (2) Every person who falsely personates another and in such assumed
16 character attempts to obtain or does obtain employment shall be guilty of a
17 misdemeanor.

18 SECTION 3. That Chapter 30, Title 18, Idaho Code, be, and the same is
19 hereby amended by the addition thereto of a NEW SECTION, to be known and
20 designated as Section 18-3001A, Idaho Code, and to read as follows:

21 18-3001A. FALSIFYING PUBLIC RECORDS FOR EMPLOYMENT -- PROHIBITION --
22 PENALTY. Any person who willfully destroys, alters, falsifies or commits
23 the theft of the whole or any part of any public document of the state or any
24 county or municipality in the state to assist an unauthorized alien to become
25 an employee or manufactures false identification to assist an unauthorized
26 alien to become an employee, shall be guilty of a misdemeanor for a first
27 offense and a felony for an additional offense.

28 SECTION 4. That Title 44, Idaho Code, be, and the same is hereby amended
29 by the addition thereto of a NEW CHAPTER, to be known and designated as
30 Chapter 4, Title 44, Idaho Code, and to read as follows:

31 CHAPTER 4

32 EMPLOYMENT OF UNAUTHORIZED ALIENS

33 44-401. SHORT TITLE. This chapter may be cited as the "Employment of
34 Unauthorized Aliens Act."

35 44-402. DEFINITIONS. In this chapter, unless the context otherwise
36 requires:

37 (1) "Agency" means any agency, department, board or commission of this
38 state or a county or city that issues a permit or license for purposes of
39 operating a business in this state.

40 (2) "Employee" means any person who performs services or labor for an
41 employer in the state for wages or other remuneration. For the purposes
42 of this chapter, "employee" shall not refer to a person performing casual
43 domestic labor in or around one's personal abode. For the purposes of
44 this chapter an employer-employee relationship does not exist between a
45 contractor and the employees of a subcontractor.

(3) "Employer" means an individual, corporation, limited liability company, partnership or other recognized legal entity that transacts business in this state, that has a permit or license issued by a state agency or any political subdivision of this state, and employs one (1) or more individuals who perform employment in this state. Employer includes any self-employed persons.

(4) "E-Verify," formerly known as the basic pilot/employment eligibility verification program, is the internet-based system operated by the federal department of homeland security in partnership with the social security administration that allows participating employers to electronically verify the employment eligibility of their newly-hired employees. For purposes of this chapter, any provisions requiring the use of E-Verify are conditioned upon reauthorization by congress.

(5) "Knowingly employ an unauthorized alien" or "knowing" means the acts or actions described in 8 U.S.C. section 1324a. These terms shall be interpreted consistently with 8 U.S.C. section 1324a and any applicable federal rules and regulations.

(6) "Legal employment affidavit" means an affidavit that indicates that an employer does not knowingly employ an unauthorized alien, that an employer will not direct any other person to employ an unauthorized alien and that an employer makes a good faith effort to comply with all federal and state laws regarding the authorization for employment in the United States of every employee who is employed by the employer in this state.

(7) "License" or "permit" means any agency permit, certificate, approval, registration, charter or similar form of authorization that is required by law and that is issued by any agency for the purposes of operating a business in this state but does not include a license or permit issued by the department of water resources or the department of environmental quality and does not include any professional license issued pursuant to title 54, Idaho Code, or the Idaho state bar association.

(8) "Unauthorized alien" means an alien who does not have the legal right or authorization under federal law to work in the United States as defined in 8 U.S.C. section 1324a(h)(3).

44-403. EMPLOYMENT OF UNAUTHORIZED ALIENS -- PROHIBITION -- LEGAL EMPLOYMENT AFFIDAVIT -- VIOLATION -- CLASSIFICATION. (1) An employer shall not employ an alien knowing the alien is an unauthorized alien, as defined in 8 U.S.C. section 1324a(h)(3) with respect to such employment.

(2) When investigating a complaint that an employer allegedly knowingly employs an unauthorized alien, the attorney general or prosecuting attorney shall verify the work authorization and immigration status of the alleged unauthorized alien with the federal government pursuant to 8 U.S.C. section 1373(c). A state, county or local official shall not attempt to independently make a final determination on whether an alien is authorized to work in the United States. A complaint that is based upon the race, ethnicity or national origin of an employee shall not be acted upon.

(3) A person who knowingly files a false and frivolous complaint shall be guilty of a misdemeanor.

1 (4) An action for a violation of subsection (1) of this section shall be
2 brought against the employer by the prosecuting attorney in the county where
3 the unauthorized alien employee is employed.

4 (5) The prosecuting attorney shall not bring an action against an
5 employer for any violation of subsection (1) of this section that occurs with
6 respect to an employee's employment prior to October 1, 2010. A second or
7 third violation of the provisions of this section shall be based only on an
8 unauthorized alien who is employed by the employer after an action has been
9 brought for a violation of the provisions of subsection (1) of this section.

10 (6) On a finding of a violation of the provisions of subsection (1) of
11 this section:

12 (a) For a first violation, during a three (3) year period, of the
13 provisions of subsection (1) of this section, the following provisions
14 shall apply:

15 (i) The court shall order the employer to terminate the
16 employment of any unauthorized alien whose unauthorized status
17 has been confirmed with finality by the federal government
18 pursuant to 8 U.S.C. section 1373(c).

19 (ii) The court shall order the employer to file a signed,
20 sworn legal employment affidavit with the prosecuting attorney
21 within three (3) business days after the order is issued. The
22 affidavit shall state that the employer has terminated the
23 employment of all unauthorized aliens and that the employer does
24 not knowingly employ an unauthorized alien. The court shall order
25 the appropriate agencies to suspend all licenses subject to this
26 chapter that are held by the employer if the employer fails to file
27 a signed, sworn legal employment affidavit with the prosecuting
28 attorney within three (3) business days after the order is issued.

29 (iii) All licenses that are suspended under this subsection
30 (6) (a) shall remain suspended until the employer files a signed,
31 sworn legal employment affidavit with the prosecuting attorney.
32 Notwithstanding any other provision of law, on filing of the
33 affidavit the suspended licenses shall be reinstated immediately
34 by the appropriate agencies for the purposes of this subsection.

35 (iv) The licenses that are subject to suspension under this
36 subsection (6) (a) are all licenses that are held by the employer
37 and that are necessary to operate the employer's business
38 at the employer's business location where the unauthorized
39 alien performed work. If a license is not necessary to operate
40 the employer's business at the specific location where the
41 unauthorized alien performed work, but a license is necessary
42 to operate the employer's business in general, the licenses that
43 are subject to suspension under this subsection are all licenses
44 that are held by the employer at the employer's primary place of
45 business. On receipt of the court's order and notwithstanding any
46 other law, the appropriate agencies shall suspend the licenses
47 according to the court's order.

48 (b) For a second violation, during a three (3) year period, the court
49 shall order the appropriate agencies to suspend all licenses described
50 in subsection (6) (a) of this section that are held by the employer for

1 a period not to exceed ten (10) business days. The court shall base
2 its decision to suspend pursuant to this subsection, on any evidence
3 or information submitted to it during the action for a violation of the
4 provisions of this section and shall consider the following factors, if
5 relevant:

- 6 (i) The number of unauthorized aliens employed by the employer;
- 7 (ii) Any prior misconduct by the employer;
- 8 (iii) The degree of harm resulting from the violation;
- 9 (iv) Whether the employer made good faith efforts to comply with
10 any applicable requirements;
- 11 (v) The duration of the violation;
- 12 (vi) The role of the directors, officers or principals of the
13 employer in the violation;
- 14 (vii) Any other factors the court deems appropriate.

15 (c) For a third or subsequent violation of subsection (1) of this
16 section, during a three (3) year period, the court shall order the
17 appropriate agencies to revoke all licenses that are held by the
18 employer that are necessary to operate the employer's business at the
19 employer's business location where the unauthorized alien performed
20 work for a period not to exceed one (1) year. The court shall base its
21 decision to suspend pursuant to this subsection, on any evidence or
22 information submitted to it during the action for a violation of the
23 provisions of this section and shall consider the following factors, if
24 relevant:

- 25 (i) The number of unauthorized aliens employed by the employer;
- 26 (ii) Any prior misconduct by the employer;
- 27 (iii) The degree of harm resulting from the violation;
- 28 (iv) Whether the employer made good faith efforts to comply with
29 any applicable requirements;
- 30 (v) The duration of the violation;
- 31 (vi) The role of the directors, officers or principals of the
32 employer in the violation;
- 33 (vii) Any other factors the court deems appropriate.

34 (d) If in the enforcement of this chapter, a court finds that an
35 employer unknowingly employed an unauthorized alien, the court shall
36 order the employer to terminate the employment of the unauthorized
37 alien whose unauthorized status has been confirmed with finality by the
38 federal government pursuant to 8 U.S.C. section 1373(c).

39 (7) On determining whether an employee is an unauthorized alien, the
40 court shall defer to the federal government's determination pursuant to 8
41 U.S.C. section 1373(c). The federal government's determination creates a
42 rebuttable presumption of the employee's employment authorization or lack
43 of employment authorization. The court may take judicial notice of the
44 federal government's determination and may request the federal government
45 to provide automated or testimonial verification pursuant to 8 U.S.C.
46 section 1373(c).

47 (8) For purposes of this section, an employer who establishes that it
48 has complied in good faith with the requirements of 8 U.S.C. section 1324a,
49 establishes an affirmative defense that the employer did not intentionally

1 or knowingly employ an unauthorized alien with respect to that particular
2 employee.

3 (9) For purposes of this section, proof that an employer verified
4 the employment authorization of an employee through E-Verify creates an
5 absolute defense that an employer did not knowingly employ an unauthorized
6 alien with respect to that particular employee.

7 SECTION 5. That Chapter 30, Title 63, Idaho Code, be, and the same is
8 hereby amended by the addition thereto of a NEW SECTION, to be known and
9 designated as Section 63-3035D, Idaho Code, and to read as follows:

10 63-3035D. EMPLOYER NOTICE. On or before July 1, 2010, the state tax
11 commission shall provide a notice to every employer that is required to
12 withhold tax pursuant to chapter 30, title 63, Idaho Code. The notice shall
13 explain the requirements of chapter 4, title 44, Idaho Code, including the
14 following:

15 (1) A new state law prohibiting employers from knowingly employing an
16 unauthorized alien.

17 (2) For a first violation of this new state law during a three (3)
18 year period, the court shall order the appropriate licensing agencies
19 to suspend all licenses held by the employer unless the employer files a
20 signed, sworn legal employment affidavit with the prosecuting attorney
21 within three (3) business days. The filed affidavit must state that the
22 employer has terminated the employment of all unauthorized aliens and that
23 the employer will not knowingly employ an unauthorized alien. A license that
24 is suspended will remain suspended until the employer files a signed, sworn
25 legal employment affidavit with the prosecuting attorney.

26 (3) For a second violation of this new state law during a three (3) year
27 period, the court may order the appropriate agencies to suspend all business
28 licenses held by the employer for up to ten (10) business days.

29 (4) For a third violation of this new state law during a three (3) year
30 period, the court will order the appropriate licensing agencies to revoke
31 all licenses that are held by the employer for a period not to exceed one (1)
32 year.

33 (5) An employer who establishes that it has complied in good faith with
34 the requirements of 8 U.S.C. 1324a, establishes an affirmative defense.

35 (6) Proof of verifying the employment authorization of an employee
36 through E-Verify, as defined in section 44-402, Idaho Code, shall be an
37 absolute defense.

38 (7) Instructions for the employer on how to enroll in E-Verify, as
39 defined in section 44-402, Idaho Code.

40 SECTION 6. SEVERABILITY. The provisions of this act are hereby declared
41 to be severable and if any provision of this act or the application of such
42 provision to any person or circumstance is declared invalid for any reason,
43 such declaration shall not affect the validity of the remaining portions of
44 this act.